



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33380170

Date: OCT. 2, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a scientist researching plant pathology, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), including items such as awards, published material in certain media, and scholarly articles. If those standards

do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner earned a doctorate in agriculture from [REDACTED] in 2016, through a joint program with the [REDACTED]. She then trained as a research fellow at [REDACTED] from 2016 to 2021. When she filed the petition in 2022, the Petitioner was a post-doctoral associate at [REDACTED] as a J-1 nonimmigrant exchange visitor. The Petitioner stated that her “contributions include strategies to control *Phytophthora capsici* . . . , Tobacco mosaic virus . . . , and root parasitic weeds.”¹

Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed to have satisfied five of these criteria, summarized below:

- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met two of the criteria, relating to judging and authorship of scholarly articles. On appeal, the Petitioner asserts that she also meets the criterion relating to original contributions. The Petitioner also incorporates her earlier response to a request for evidence (RFE), referring to her claims regarding published material about her and leading or critical roles.

The Petitioner contends on appeal that the Director did not consider the record as a whole, instead focusing on how specific parts of the record addressed individual regulatory criteria. Under the *Kazarian* framework, a petitioner must first satisfy the requirements of at least three regulatory criteria. The second step is to review the record as a whole with regard to whether the Petitioner has established sustained national or international acclaim. The Director did not proceed to that second step, having concluded that the Petitioner had not satisfied at least three of the threshold criteria.

¹ We note that, in March 2024, the Petitioner filed an immigrant petition for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. That petition, with receipt number [REDACTED] was approved in July 2024.

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criteria relating to judging and scholarly articles. As discussed below, we also agree with the Director that the Petitioner has not satisfied the criteria relating to published material and leading or critical roles. Further below, we will discuss the Petitioner's remaining claim of original contributions of major significance.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The published material should be about the person, relating to the person's work in the field. However, the person and the person's work need not be the only subject of the material; published material that covers a broader topic but includes a substantial discussion of the person's work in the field and mentions the person in connection to the work may be considered material about the person relating to the person's work. *See generally 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual>.*

We may consider material that focuses solely or primarily on work or research being undertaken by a team of which the person is a member, provided that the material mentions the person in connection with the work or other evidence in the record documents the person's significant role in the work or research. *Id.*

Under this criterion, the Petitioner pointed to the citations of her scholarly articles by other researchers. Those citations mention the Petitioner's name when she is the primary author of the cited article, but the citing articles are not solely or primarily about the Petitioner's work in the field. Rather, the citing authors identified the Petitioner or the team in which she works as the source, or one of multiple sources, for a particular fact referenced in the citing article. Such citations are not published materials about the Petitioner, any more than the Petitioner's own scholarly articles are published materials about any of the authors whom she and her co-authors cited in those articles.

One of the Petitioner's articles appeared in *ChemBioChem* with the tag "Very Important Paper" above the title. This three-word tag is not, by itself, published material about the Petitioner. Its relevance to the significance of the Petitioner's work is a separate consideration, discussed further below.

We agree with the Director that the Petitioner has not met the requirements of this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

In the initial statement submitted with the petition, the Petitioner did not directly address this criterion except to state that "the totality of the evidence already presented would make this category an easy win." Because the Petitioner bears the burden of proof in this proceeding, it is the Petitioner's responsibility to explain how the evidence supports her claims. It is not sufficient for the Petitioner to refer generally to categories of evidence in the record and assert that unspecified information in that evidence establishes that she is, or has been, a "Key Member of [an unnamed] Distinguished Organization."

In the RFE, the Director discussed fully the types of evidence and information that would be necessary for the Petitioner to establish a leading or critical role for a distinguished organization or establishment. In response, the Petitioner cited “material showing that [] is a distinguished organization.”

We do not dispute the distinguished reputation of [] as a whole, but the Petitioner has not explained how her employment as a postdoctoral researcher in the Department of Plant Biology is leading or critical for the entirety of []. Alternatively, where a role is leading or critical for a division or department of an organization or establishment, the petitioner must show that the department or division has a distinguished reputation. *See generally 6 USCIS Policy Manual*, supra, at F.2(B)(1). Here, the Petitioner’s response to the RFE included a letter from the professor who supervises the Petitioner at []. The professor stated that the Petitioner “was recruited as the number 2 member of my group.” The Petitioner did not cite evidence of a leading or critical role beyond the professor’s group, or evidence that the professor’s group has a distinguished reputation in its own right.

We agree with the Director that the Petitioner has not met her burden of proof to meet the regulatory requirements for this criterion.

There remains one more criterion, toward which the Petitioner has devoted the bulk of her arguments in the petition and on appeal.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

When determining the major significance of an individual’s contributions, examples of relevant evidence include, but are not limited to:

- Published materials about the significance of the person’s original work;
- Testimonials, letters, and affidavits about the person’s original work;
- Documentation that the person’s original work was cited at a level indicative of major significance in the field; and
- Patents or licenses deriving from the person’s work or evidence of commercial use of the person’s work.

See generally 6 USCIS Policy Manual, supra, at F.2(B)(1).

Evidence that the person’s work was funded, patented, or published, while potentially demonstrating the work’s originality, will not necessarily establish, on its own, that the work is of major significance to the field. For example, published research that has provoked widespread commentary on its importance from others working in the field, and documentation that it has been highly cited relative to others’ work in that field, may be probative of the significance of the person’s contributions to the field of endeavor. Similarly, evidence that the person developed a patented technology that has attracted significant attention or commercialization may establish the significance of the person’s original contribution to the field. *Id.*

In denying the petition, the Director concluded that the Petitioner “has made original contributions to the field,” but had not established the major significance of those contributions.

We agree with the Petitioner’s argument on appeal that the Director did not sufficiently explain why the submitted evidence is insufficient. The Petitioner has devoted most of her arguments and evidence to the “original contributions” criterion, but the denial notice provides few details about why the evidence is insufficient.

For example, the Director acknowledged the Petitioner’s submission of citation data for the Petitioner’s articles, but did not say how this information affected the outcome of the decision. If it is the Director’s position that the Petitioner has not shown her work to be particularly well-cited, then the Director must explain how this is the case, citing to evidence in the record.²

We consider documentation that the person’s original work was cited at a level indicative of major significance in the field. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). The burden is on the Petitioner to establish that the rate of citations of her published work rises to that level. The Petitioner has submitted citation statistics which the Director has not yet evaluated. On remand, the Director must consider this information and gauge its reliability and applicability.³

The Director also stated that the Petitioner submitted “reference letters [that] do not go into detail on how the beneficiary’s work has accomplished contributions of major significance.” This conclusion, simply stated without illustrative examples, is not sufficient to permit an effective appeal.⁴

At the same time, we emphasize that characterizations in the Petitioner’s statements and briefs cannot suffice to establish the significance of her contributions. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). For instance, the Petitioner’s assertions about the significance of the “Very Important Paper” tag appended to her *ChemBioChem* article have no weight as evidence, and the burden of proof is on the Petitioner to support those assertions.

III. CONCLUSION

The Petitioner’s claim rests heavily on evidence intended to show original contributions of major significance. The Director’s discussion of that evidence lacked sufficient detail to explain how the Director reached the conclusions stated in the denial notice. On remand, the Director must consider

² If the Director relies upon evidence or information from outside the record, then the Director must advise the Petitioner of that evidence or information as set forth at 8 C.F.R. § 103.2(b)(16)(i).

³ Some of the citation statistics are divided by fields. The Petitioner compares her citation rate to the statistics for “Plant & Animal Science,” rather than to other, more highly cited fields such as “Microbiology” and “Molecular Biology & Genetics.” The burden is on the Petitioner to establish that Clarivate, which compiled the statistics, categorizes the Petitioner’s published work under “Plant & Animal Science.” Without such evidence, the Petitioner has not established that the statistics in that field apply to her published work. We also note that the Petitioner’s appeal, filed in 2024, includes year-by-year citation statistics that appear to date from 2020, in which case they were out of date at the time of their submission. The Petitioner appears to characterize these statistics as applying to a researcher’s total career citation total, but they appear instead to refer to specific articles.

⁴ Some letters and other materials credit the Petitioner with making a particular discovery or observation “for the first time.” We emphasize that being the first to make a particular finding may be a sign of *originality*, but it does not establish its major significance. It cannot suffice for the Petitioner to show that she was the first to make a particular finding; she must also establish that the finding is of major significance in the field. Likewise, letters and other materials explain why particular findings are *useful*, but that does not convey how the findings are of major significance in the field.

this evidence more fully and, if appropriate, allow the Petitioner another opportunity to supplement the record with specified evidence.

In the event the Director determines that the Petitioner has satisfied three initial criteria, then the Director must undertake a final merits determination as outlined in *Kazarian*.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.